

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N. J. 07016

BULLETIN 2272

December 8, 1977

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1. ADVISORY NOTICE OF DIRECTOR - SPECIAL RULES TO APPLY TO ALCOHOLIC BEVERAGE LICENSES IN ATLANTIC CITY.

On September 15, 1977, pursuant to authority contained in N.J.S.A. 33:1-39 and N.J.S.A. 52:17B-15 et seq., and in accordance with the applicable provisions of the Administrative Procedure Act, I adopted an emergency rule concerning the issuance, renewal and transfer of alcoholic beverage licenses in the City of Atlantic City.

Full text of the adopted rule follows:

State Regulation No. 3, Rule 11:

Pursuant to my authority as Director of the Division of Alcoholic Beverage Control, I hereby make the following special findings of fact:

1. On June 2, 1977, Governor Brendan T. Byrne signed into law the Casino Control Act (Chapter 110, Laws of 1977). This act implements the amendment to Article 4, Section 7, Paragraph 2 of the New Jersey State Constitution passed by referendum in the general election of November 2, 1976, which authorizes the establishment of casino gambling in the city of Atlantic City.
2. The city of Atlantic City is unique in its status as the only location in New Jersey which is excepted from the State's general public policy against gaming for private gain.
3. The sale of alcoholic beverages and the operation of casino gambling are both exceptionally sensitive enterprises attended with danger to the community, and must be carefully supervised and conducted by reputable people in a responsible manner. It is of particular public importance that individuals associated with organized crime be precluded from exploiting these industries.
4. The sale of alcoholic beverages from premises which are in geographic proximity to gambling casinos presents serious and unprecedented problems in law enforcement and alcoholic beverage regulation.
5. The Legislature has determined in Article 1, Section 1.b.(9) that "it is vital to the interests of the State to prevent entry, directly or indirectly, into [Casino] operations or the ancillary industries regulated by [the] Act of persons who have pursued economic gains in an occupational manner

or context which are in violation of the criminal or civil public policies" of this State. The sale of alcoholic beverages on casino premises is an activity directly regulated by the Casino Control Act only in those instances wherein the licensed premise is located within a casino hotel facility. The sale of alcoholic beverages on other than casino related premises continues to be regulated by the Division of Alcoholic Beverage Control and the local issuing authority. The sale of alcoholic beverages in the City of Atlantic City is an industry economically ancillary and complementary to the casino industry. As such, this industry and its licensees require the utmost regulation, supervision and investigation of licensees and potential licensees as may be available under the Alcoholic Beverage Law.

6. The Board of Commissioners of the city of Atlantic City is the local authority responsible for issuing and transferring Class C alcoholic beverage licenses, 258 of which are currently outstanding.

7. A Special Liquor License Task Force has conducted a review of issuing practices and found that the Board lacks adequate resources, manpower and expertise to properly review license applications and to conduct the required investigation into the qualifications of license holders and prospective licensees.

8. The Task Force review to date has shown that:

a) For the licensing year under review, 73 of 258 applications filed were patently defective on their face. Licenses have been issued to these applicants despite inaccurate or incomplete applications.

b) Following the inception of review by the Task Force, 10 additional licenses have been issued on the basis of patently defective applications.

c) At least 9 licenses have been issued to applicants who appear to be criminally disqualified.

d) One license has been issued to an applicant whose criminal disqualification appeared on the face of the application.

e) Insufficient action has been taken to prevent employment of criminally disqualified persons on licensed premises by alcoholic beverage licensees.

9. The aforementioned licenses are subject to application for transfer at any time, each of which requires investigation into the qualifications of the transferees. Several applications for transfer are currently pending.

10. In order to avoid unnecessary and irreparable damage to the local community and the declared public policies of the State, pending applications for renewal or transfer of retail alcoholic beverage licenses require immediate and thorough examination and investigation of the qualifications of individual and corporate interests.

Based on the foregoing, I conclude that the Board of Commissioners of the City of Atlantic City is unable to conduct the issuance of alcoholic beverage licenses in a manner consistent with the demands of the public interest without the assistance of the Division of Alcoholic Beverage Control. To insure the integrity of the alcoholic beverage industry in Atlantic City, it is essential that

this Division oversee the functions of the local issuing authority on an interim basis.

The Director of the Division of Alcoholic Beverage Control is under a specific legislative mandate to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to eliminate criminally disqualified persons from the industry, and assure its integrity. N.J.S.A. 33:1-3. The Alcoholic Beverage Law requires that the Director conduct such investigations of licensees and applicants as is required to effectively administer the law. N.J.S.A. 33:1-23 and 35. Also, pursuant to N.J.S.A. 33:1-39 the Director is empowered to make "special rulings and findings" and to provide "instructions for municipalities and municipal boards."

Accordingly, IT IS ORDERED that the following special rules shall be effective immediately until further order of the Director:

1. The Board of Commissioners of Atlantic City shall forward to the Division of Alcoholic Beverage Control a copy of all applications for issuance, renewal or transfer of any alcoholic beverage license.
2. No action shall be taken by the Board with respect to any application until conduct of an appropriate investigation by the Division of Alcoholic Beverage Control.
3. Upon completion of the investigation, the Division of Alcoholic Beverage Control shall certify whether granting of the application is in the public interest.
4. Upon a finding by the Division that granting of the application will not be contrary to the public interest, the Board of Commissioners may act upon the application in any way consistent with its legal authority.
5. Upon a finding by the Division that the granting of the application would be contrary to the public interest, the Board of Commissioners shall deny the application.
6. The applicant shall retain the right conferred by N.J.S.A. 33:1-22 to appeal to the Director from the denial of an application by the Board of Commissioners and shall be afforded a plenary hearing.

Joseph H. Lerner
Director

Dated: September 15, 1977

2. APPELLATE DECISIONS - LAKE LENAPE LODGE, INC. v. ANDOVER.

#4087 & 4088
Lake Lenape Lodge, Inc.
t/a Lenape Colonial Inn,

Appellant,

v.

Township Committee of the
Township of Andover,

Respondent.

On Appeal

CONCLUSIONS
and
ORDER

F. William La Vigne, Esq., Attorney for Appellant
Morris, Downing and Sherred, Esqs., by David L. Jubanowsky, Esq.,
Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

These are consolidated appeals from two separate resolutions of the Andover Township Committee affecting appellant's Plenary Retail Consumption License C-1, for premises located at Lake Lenape, Andover.

The first resolution dated June 29, 1976, approved renewal of the license for the 1976-77 year, subject to certain special conditions, and provided as follows:

"RESOLUTION

WHEREAS, the Township Committee of the Township of Andover, being the governing body of said municipality, did hold, according to statute, a public hearing on June 29, 1976, for the purpose of determining whether or not a renewal of Plenary Retail Consumption License #C-1 (applicant Lake Lenape Lodge t/a Lenape Colonial Inn) should be granted; and

WHEREAS, testimony was admitted both in favor of and against said renewal and the Township and the licensee were given the opportunity to question all sworn witnesses.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Andover, County of Sussex, and State of New Jersey, that after hearing all such testimony and considering same, this Committee directs the following:

1. That the parking lot of the Lake Lenape Lodge be completed within sixty (60) days of this Resolution to conform with the conditions of the 1972 Resolutions of the Zoning Board of Adjustment and meet with the approval of the Township Engineer and Zoning Officer.

2. That there be strict adherence to occupancy limitations imposed by any and all local ordinances and/or accepted state and national standards of public safety in buildings.

3. That bands, combos or other groups or individuals providing musical entertainment use only acoustical (non-amplified) instruments.

4. That the storage area in the rear of Lake Lenape Lodge be remodeled in accordance with the licensee's heretofore issued building permit.

5. That the licensee recognize his personal responsibility for the failure of its patrons to comply with all regulations pertaining to traffic, parking and noise in the proximity of said Lake Lenape Lodge.

BE IT FURTHER RESOLVED that to assure compliance with the above directives, the license in question, #C-1, be renewed but also suspended for a period of thirty (30) days commencing at 12:01 A.M., July 1, 1976.

BE IT FURTHER RESOLVED that if items #1 and #4 as enumerated above are not resolved to the satisfaction of the Building Inspector/Zoning Officer and this governing body, the abovementioned 30-day suspension may be extended.

BE IT FURTHER RESOLVED that if the licensee fails to abide by the spirit and letter of this Resolution, the Township Committee recognizes its right and responsibility to take whatever action may be permitted by statute to resolve problems associated

with the renewal of license #C-1.

Mae Bauerlein, Township Clerk

ADOPTED: June 29, 1976

CERTIFIED: July 27, 1976"

The second resolution adopted October 26, 1976 suspended appellant's license for forty-five days, or until it satisfied the conditions set forth therein. The resolution is as follows:

"WHEREAS, the Township Committee of the Township of Andover, being the governing body of said municipality, did hold, according to statute, a public hearing on June 29, 1976 for the purpose of determining whether or not a renewal of Plenary Retail Consumption License #C-1 (applicant Lake Lenape Lodge T/A Lenape Colonial Inn) should be granted, and

WHEREAS, said Resolution imposed certain terms and conditions agreed to by the applicant; and

WHEREAS, at a subsequent public hearing held for the same purpose on October 26, 1976, it was found that said terms and conditions had not been fulfilled to the satisfaction of the Andover Township Committee.

NOW, THEREFORE BE IT RESOLVED by the Township Committee of the Township of Andover, County of Sussex and State of New Jersey that Plenary Retail Consumption License C-1 is hereby suspended for a period of forty-five (45) days or until the conditions of the June 29, 1976 Resolution are fulfilled to the satisfaction of said Township Committee, whichever comes first.

BE IT FURTHER RESOLVED that said suspension shall be effective at the opening of business hours on October 27, 1976.

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded to the applicant, F. William La Vigne, Esq.

Mae Bauerlein, Clerk

CERTIFIED: October 27, 1976"

Appellant contends, in its Petitions of Appeal that the special conditions placed upon its license were arbitrary, capricious and unreasonable, and the forty-five day suspension is not warranted and exceeds any sanction which could be placed upon the appellant for failure to comply with a Zoning Board resolution.

In its answers, the Committee denied the substantive allegations contained in the petitions of appeal.

Upon filing of the appeals, an order, dated October 28, 1976, was entered by the Director staying the Committee's resolution of suspension pending the determination of this joint appeal.

At the de novo hearing on appeal herein, the parties agreed to rely upon the transcripts of several proceedings held below. This was supplemented by the joint submission of exhibits and by oral argument, pursuant to Rules 6 and 8 of State Regulation No. 15.

I.

Rule 3 of State Regulation No. 15 provides as follows:

"Rule 3. Appeals from the issuance of a license and from the granting of an application for the extension or transfer of a license must be taken within thirty (30) days from the date of the action appealed from; all other appeals must be taken within thirty (30) days after the service or mailing of notice by the municipal issuing authority of the action appealed from."

The resolution of June 29, 1976, certified July 27, 1976, containing the conditions or restrictions complained of, was served upon the corporate licensee more than thirty days prior to its filing its notice of appeal, dated October 27, 1976.

The issue of timeliness of an appeal, being raised sua sponte, to an administrative agency was determined by the Appellate Division of the Superior Court in the matter of Hess Oil and Chemical Corp. v. Doremus Sport Club, 80 N.J. Super. 393, 396 (App. Div. 1963) wherein the court stated:

"Since the appeal was untimely, the Division acted properly in refusing to hear it. Indeed the Division had no jurisdiction to accept the appeal...."

See also First Baptist Church of Bloomfield v. Bloomfield and Proud Mary's, Inc., Bulletin 2249, Item 3.

Therefore the Director has no jurisdiction to accept an appeal, nor jurisdiction to determine same, which has been untimely filed. Accordingly, it is recommended that the appeal with respect to the special conditions imposed on said license be dismissed.

II.

From a full review of the pleadings, transcripts and summations, the following factual background emerges relative to the forty-five day suspension of appellants license by resolution certified October 27, 1976.

In 1972, a predecessor in title to the Lodge was granted permission to make certain improvements to the parking lot and its drainage by the Zoning Board of Adjustment. The work was not undertaken by this or subsequent owners of the licensed establishment. The record fails to disclose that the Township ever attempted to have the 1972 Zoning Board of Adjustment resolution complied with, until 1976, when it made it a condition to the renewal of appellants license for the 1976-77 year.

Appellant contends that while the resolution may have been legal in 1972, because it contemplates draining untreated water into the lake, it is now violative of various federal and state regulations. Further, to comply with it would subject him to possible criminal or civil action, and penalty if found guilty, as well as to the expense of defending said action.

Appellant proposed, instead, that it have prepared a new plan, in accordance with current rules and regulations, and reconstruct the parking lot and install drainage pursuant to these revised plans.

Despite the Committee's insistence that it follow the 1972 resolution, appellant had new plans drawn, which were more extensive and costly, but which, it contends, complies with current federal and state water pollution regulations.

Because appellant did not complete the project within the deadline set by the Township Committee, it was suspended for forty-five days.

It is not the function of this Division to determine whether or not the 1972 Resolution is currently violative of Federal or State Regulations relative to water pollution. Certainly the major stockholder of appellant corporation, an attorney, based upon his investigation feels that it is, and

consequently has gone to a considerably greater expense to implement the mandated improvements, in accordance with revised plans drawn by an engineering firm he engaged for the purpose.

It is unquestioned that all residents using the lake will benefit from these facilities when they are in operation, as untreated water will not flow into this lake as was contemplated under the older (1972) plan.

The sole question posed in this second aspect of the appeal is whether or not the suspension imposed, predicated on the enforcement of the subject Zoning Board Resolution is a valid exercise of the Committee's discretion. The parties acknowledged that the conditions set forth in the Committee's June 29, 1976 Resolution, not related to the Zoning Board conditions, have been satisfactorily complied with and were not the basis for the forty-five day suspension imposed herein.

On several occasions an analogous question (collection of taxes) was considered in this Division. In re Sofield, Bulletin 28, Item 1, then Commissioner D. Frederick Burnett stated:

"I am in hearty sympathy with the natural desire of your Township Committee to use every proper means to force the payment of taxes in your municipality. The question before me however, is not the worthiness of the motive but whether the power exists...the collection of municipal taxes which objective, however laudable, has nothing in common with Liquor Control."

The succeeding Director (then Commissioner) Alfred E. Driscoll, in a parallel matter ruled:

"Failure to pay real estate taxes due upon premises occupied by a licensee is not sufficient reason for denial of a license. Re Sofield, Bulletin 28, Item 1. Since on the record herein, no other issue now appears to be involved, I must reverse the action of respondent."

Battlewood Republican Club, Inc. v. Haddon, Bulletin 527, Item 2.

Similarly, a few years later, the principle was repeated "... it has been long established that the collection of taxes has nothing to do with liquor control." Rockaway Township Tavern Association et al v. Rockaway, Bulletin 714, Item 6. The principle remains unchanged to date. In a recent case, the Director decided "...that there is no legal authority

for a municipality to use the approval or denial of a transfer of a plenary retail consumption license as a means of resolving drainage problems existing in the area of the subject licensed premises." My Daddy's Buddy, Inc. v. Perth Amboy, Bulletin , Item .

Hence, for the past forty years, all efforts to specially condition the issuance or renewal of alcoholic beverage licenses with such conditions which are without or beyond the jurisdiction of the issuing authority, have uniformly failed.

The burden of establishing that the action of the municipal issuing authority is erroneous and should be reversed, rests with appellant, pursuant to Rule 6 of State Regulation No. 15. Since the action of the Committee has no legal basis, that burden has been met by the appellant.

It is, therefore, recommended that the action of the Township Committee suspending appellant's license for forty-five days, be reversed.

Conclusions and Order

No Exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having fully considered the entire record herein in these consolidated appeals, including the transcripts of the testimony, the exhibits, and the Hearer's report, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 20th day of July 1977,

ORDERED that appellant's appeal from the imposition of special conditions on its license for the 1976-77 licensing year, imposed by respondent Township Committee of the Township of Andover by resolution dated June 29, 1976, having been untimely filed, be and the same is hereby dismissed; and it is further

ORDERED that the action of the respondent Township Committee of the Township of Andover suspending the subject license for forty-five (45) days be and the same is hereby reversed, and the charge herein be and the same is hereby dismissed.

Joseph H. Lerner
Director

3. APPELLATE DECISIONS - 3701 WEST CORPORATION v. ATLANTIC CITY.

3701 West Corporation, :
t/a Airport Motor Inn, :
: :
Appellant, : On Appeal
v. : CONCLUSIONS
: AND
Board of Commissioners of : ORDER
the City of Atlantic City, :
: :
Respondent. :

Hankin and D'Amato, Esqs., by Paul R. D'Amato, Esq., Attorneys
for Appellant
William Goddard Lashman, Esq., Attorney for Respondent
Harold L. Garber, Esq., Attorney for Objectors

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Board of Commissioners of the City of Atlantic City (hereinafter Board) which, On December 9, 1976, denied appellant's application for a place-to-place and person-to-person transfer of Plenary Retail Consumption License C-199, from Samhar, Inc. t/a Piccadilly Bar and Lounge, premises located at 134 South Virginia Avenue, Atlantic City, to 3701 West Corporation, t/a Airport Motor Inn, premises located at 3701 Filbert Avenue, Atlantic City.

In its resolution of December 9, 1976, the Board denied the transfer application for the following reasons:

- "(1) There are sufficient licensed premises in the immediate area to service the public.
- (2) The granting of a license would not be in the public interest and would not be in aid of the public welfare.
- (3) Under the decision of Lyons Farms Tavern v. Municipal Board, 68 N.J. 44, the Board of Commissioners, in considering this application for a transfer of a Plenary

Retail Consumption license, gave recognition to the community sentiment which was overwhelmingly against the transfer and, therefore, this application was denied."

The Board's vote was as follows:

Affirmative: 1 Vote
To Deny: 2 Votes
Abstain: 2 Votes

Appellant, in its petition of appeal, alleges that the action of the Board was erroneous in that:

(a) It failed to take into account the situation existing at the time and the prospective development of the specific location as well as the development of Atlantic City in general as a result of the recently enacted amendment to the Constitution of the State of New Jersey.

(b) The erroneous conclusion of the two members voting to deny the transfer of the license.

Furthermore, though not contained in the petition of appeal, at the de novo hearing, appellant contended that the abstention by two Board members was procedurally incorrent; and it is asserted that they were obliged to vote either to affirm or deny the application.

In its answer, the Board denies these allegations and affirmatively alleges that its action was proper in that the Board exercised its sound discretion in denying the transfer based on sufficient proofs at an open hearing.

A de novo hearing was held in this Division pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses. A transcript of the proceedings held by the Board, on November 10, 1976, was admitted in evidence, in accordance with Rule 8 of State Regulation No. 15. Additionally, various exhibits were received in evidence.

No witnesses were called to testify in behalf of the Board or the objectors herein.

Two subpoenaed witnesses, who were objectors, and a corporate officer of 3701 West Corporation testified on behalf of appellant.

From the testimony and exhibits the following factual background emerges.

The Airport Motor Inn, owned by 3701 West Corporation, was acquired recently from its prior owners. At the time of acquisition, there was a licensed establishment on the premises supplying the needs of motel patrons, as well as, others from the neighborhood. The licensee was a tenant, not subject to the motel's control.

Soon after closing title, the liquor licensee obtained permission to move his license to a vacant building nearby, leaving the motel with no on-premises establishment to serve its guests' needs. The motel management had embarked upon a refurbishing and rebuilding campaign, as the previous owners had allowed it to deteriorate, and they felt that it was essential to their business to have an on-premises license for the convenience of their guests. As a result, they contracted to purchase the license held by Samhar, Inc. and move it to the motel.

The area, in which the motel is located, is referred to as Chelsea Heights. It is, to some degree, insulated from the rest of Atlantic City by water on two sides and the Airport on the third side. It has reasonably resisted the changes that have taken place in Atlantic City during the past twenty years, remaining middle class and stable, with a population of approximately 1,500 persons. It is currently undergoing reconstruction in an endeavor to prevent deterioration and retain its neighborhood character.

Over two hundred of its citizens signed petitions against moving another liquor license into Chelsea Heights, and many of them appeared at the Board meeting, when it was being discussed, to voice their opposition.

The appellant subpoenaed William Tenbrink, the Chief of Police, to testify at the de novo hearing. The obvious intent was to impeach his previous testimony, but he maintained that based upon his police experience, another license in this small area would create additional police problems.

Bader Field used by the Board of Education for its athletic events is located very close to the motel. The students and fans attending the game leave the stadium in large numbers during half-time and many of them are eighteen years of age or older. They purchase beer and liquor and return to the stadium where it is consumed during the second half. This has resulted in many fights, and some near riots in the past, some with racial overtones. Many citizens voiced their objections to this transfer, to the Chief. His various division heads also expressed their opposition to the transfer to him, as did an official of the Board of Education.

Similarly, the appellant failed to impeach the testimony of Fred Ciorlito, Sr., the tenant who formerly exercised a liquor license in the motel, before receiving a place-to-place transfer.

John Salicondro, an officer and stockholder of the corporate licensee, testified in its own behalf.

He described the extensive refurbishing and remodeling that has taken place since the 3701 West Corporation acquired the motel, as well as, future plans for improvement. He averred that because of lack of representation by Counsel at the Board hearing, he was prejudiced in failing to adequately cross-examine objectors. It was subsequently established that he elected to attend unrepresented, by voluntary choice and design. His attorney was involved in a verbal dispute with a Board member on a prior occasion, and he felt it more prudent to appear this time without this attorney. No explanation was given why he did not choose another lawyer from among the large number available in the area. He is an experienced businessman, having had building and real estate experience prior to entering the motel field.

It appears that the crucial issue to be determined is whether the Board acted reasonably and in the best interests of the community.

Preliminarily, I observe that it is a firmly established principle that a transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4; Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). As the court said in Fanwood v. Rocco, 59 N.J. Super. 306, 320 (App. Div.) aff'd 33 N.J. 404 (1960): "No person is entitled to [the transfer of a license] as a matter of law".

The Legislature has entrusted to municipal issuing authorities the initial authority and charged them with the duty to approve or disapprove place-to-place transfers. The action of the Council in either approving or denying an application for such transfer may not be reversed by the Director unless he finds "...the act of the Board was clearly against the logic and effect of the presented facts". Hudson Bergen County Retail Liquor Stores Ass'n. v. Hoboken, 135 N.J.L. 502, 511 (E. & A. 1947).

As was stated in Ward v. Scott, 16 N.J. 16, 23 (1954):

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications.... And their determinations should not be approached with a general feeling of suspicion, for as

Justice Holmes has properly admonished:
'Universal distrust creates universal
incompetence.' Graham v. United States,
231 U.S. 474, 480, 34 S. Ct. 148, 151,
58 L. Ed. 319, 324 (1913)."

In Lyons Farms Tavern, Inc. v. Mun. Bd. Alc. Bev.,
Newark, 55 N.J. 292, 303 (1970), the court stated:

"The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record."

The Supreme Court in Fanwood v. Rocco, 33 N.J. at p. 415, expressed its sentiment, as follows:

"The interests of effective liquor control are best advanced where the municipal licensing program displays fair regard not only for the convenience of residents who purchase alcoholic beverages but also for the sentiments of residents who are unsympathetic or hostile to their sale."

The above principles expressed by the courts effectively answer appellant's contention that the objections of residents does not justify the municipality's action in denying a transfer.

In the subject case, it is apparent, and I find that the Committee honored the sentiments of the neighbors who voiced their opposition to the transfer. Absent improper motivation, which has neither been alleged nor evidenced, the action of the local issuing authority, based upon proper and bona fide use of its lawful discretion, must be affirmed. Hudson Bergen County Retail Liquor Stores Ass'n. v. Hoboken, supra.

I find all other of appellant's contentions likewise to be without merit.

After considering all the evidence herein, including the transcript of the testimony, the exhibits and the summation of counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of the Board was unreasonable, erroneous, or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. Hence, I recommend that an order be entered affirming the action of the Board and dismissing the appeal.

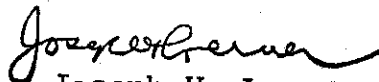
Conclusions and Order

No Exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having fully considered the entire record herein, including the transcript of the testimony, the exhibits, the oral and written summation of counsel, the memorandum of appellant, and the Hearer's report, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 20th day of July 1977,

ORDERED that the action of the respondent Board of Commissioners of the City of Atlantic City be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.


Joseph H. Lerner
Director